

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CLARK D. DWIGHT,
Plaintiff,

vs.

C. DUCKWORTH, et al.,
Defendants.

Case No. 1:16-cv-652
Barrett, J.
Litkovitz, M.J.

**REPORT &
RECOMMENDATION**

Plaintiff initiated this action on June 16, 2016 against defendants alleging a violation of his civil rights pursuant to 42 U.S.C. § 1983. (Doc. 1). On July 7, 2016, plaintiff was granted leave to proceed *in forma pauperis* and was ordered to inform the Court promptly of any changes in his address which may occur during the pendency of this lawsuit. (Doc. 4). On August 22, 2016, and on August 29, 2016, mail addressed to plaintiff was returned by the Post Office marked as “Return to Sender-Refused-Unable to Forward - Inmate Released on June 28, 2016.” (Docs. 10 & 11). On August 30, 2016, this Court issued a show cause order that plaintiff show cause in writing within fifteen (15) days why this Court should not dismiss this case for lack of prosecution and for failing to obey a Court order. (Doc. 12). Subsequently, on September 12, 2016, the Court’s show cause order was returned by the Post Office marked as “Return to Sender-Refused-Unable to Forward - Inmate Released on June 28, 2016.” (Doc. 13). To date, there is no indication from the docket that plaintiff is actively engaged in litigating this case. Accordingly, dismissal is appropriate. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be **DISMISSED** with prejudice for lack of prosecution.
2. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of this Order would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff, a non-prisoner, remains free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

9/16/16
Date

Karen L. Litkovitz
Karen L. Litkovitz
United States Magistrate Judge

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NOTICE TO THE PARTIES REGARDING FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation ("R&R"). Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days (excluding intervening Saturdays, Sundays, and legal holidays) because this R&R is being served by mail. That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. If the R&R is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).